

## Acquisition Of Rights- Assignments

### “LEADTEK WINFAST / WINFAST” Trademarks

### LEADTEK RESEARCH INC. vs. LEADTEK BİLGİSAYAR DİS TİCARET LTD. ŞTİ.

#### (\* ) 1st Court of Istanbul on Intellectual and Industrial Rights, Case no.2001/1391- Decision no.2004/739 (December 21, 2004)

An action (\*) was instituted for the assignment of the defendant’s trademark WINFAST on grounds that the defendant, who is the distributor of the plaintiff, has registered the trademark WINFAST without the consent of its proprietor.

The plaintiff claimed that the trademark WINFAST has been registered in various countries in its name; that this trademark has been/is being used for computers and parts thereof; that a distributorship agreement has been signed with the defendant; that the defendant has registered the trademark, which has been used by the defendant as per the distributorship agreement, in its name; that this registration is unlawful; that although the defendant has warranted to assign the trademark, it refrained from doing so.

The defendant objected by asserting that the action should be cited against the Turkish Patent Institute, that there is an agreement dated 21.02.2002, however, the registration has been obtained before this date and that the plaintiff has not complied with the conditions of the agreement.

The Court has rejected the claims of the defendant on grounds that as the trademark registered in the name of the defendant, it is correct to institute the action against him; that the agreement regarding the assignment of the trademark WINFAST is dated 05.12.2000 and that the said agreement is deemed to be in force as of 01.01.2000.

The Court further held that the trademark WINFAST has been registered on 17.12.1999; that the defendant has been using the word LEADTEK, which is the essential element of plaintiff’s trade name, before registration of the trademark; that the invoices dated 09.10.1999, 09.08.1999 and 14.09.1999 evidenced that there has been a commercial relation between the parties before the registration of the trademark.

In view of the evidences and fact submitted to the file, the Court ruled that there is no need for evaluation of the experts in this case and accepted the plaintiff's claims by canceling the registration in the name of the defendant and by constituting the registration records in the name of plaintiff.